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Report to the Attorney General of British Columbia and
the Chief Judge of the Provincial Court of British Columbia
Pursuant to Section 5(3) of the Judicial Compensation Act

FINAL REPORT OF THE 2004 BRITISH COLUMBIA JUDGES COMPENSATION COMMISSION

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JUDGES COMPENSATION COMMISSION

Province of British Columbia

September 25, 2004

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Final Report of the 2004 Judges Compensation Commission

We enclose two copies each of the final report of the 2004 Judges Compensation Commission, issued in accordance with Section 5(3) of the *Judicial Compensation Act*.

Respectfully submitted,

Judges Compensation Commission

George L. Morfitt, FCA
Chair

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1. Introduction

The 2004 Judges Compensation Commission was appointed on March 1, 2004 in accordance with Section 2(1) of the *Judicial Compensation Act* S.B.C. 2003 c. 59.

Membership of the Commission was as follows:

Commission Chair	Mr. George L. Morfitt, FCA Victoria
Attorney General Appointment	Mr. Vince Collins Vince Collins Management Services Victoria
Chief Judge Appointment	Mr. Christopher M. Considine, Q.C. Barrister and Solicitor, Victoria

2. Mandate

Section 5 of the *Judicial Compensation Act* requires the Commission to report on all matters respecting the remuneration, allowances and benefits of judges, and, in accordance with section 26(1) of the Act, to make recommendations with respect to those matters for the period from January 1, 2004, to March 31, 2008.

Subsection 5(5) of the *Act* requires the Commission to consider all of the following:

a) The current financial position of the government;

b) The need to provide reasonable compensation to the judges;

c) The need to maintain a strong court by attracting qualified applicants;

d) The laws of British Columbia; and

e) Any other matter the commission considers relevant.

3. Judicial Independence and Compensation Principles

In accordance with the principles set out in the Supreme Court of Canada decision of *Reference Re Public Sector Pay Reduction Act (P.E.I.)* (1997) 150 DLR 4th 650 *(the "PEI Reference Case")*, commissions such as this one have been established by statute across Canada, and there is now available a significant body of precedent reports on judicial compensation nation-wide.

These reports refer, without exception, to the vital importance of judicial independence in a democratic society. On this subject, for example, the 2001 British Columbia Judicial Compensation Commission report noted as follows at page 14:

> *Our form of government includes three branches – Legislative (elected Members of the Legislative Assembly); Executive (the Cabinet and civil service); and Judiciary. It is widely acknowledged that to safeguard the freedoms of our democratic society and to maintain public confidence in the justice system, the judiciary must be independent from the other branches. The public needs to know that Judges will make their decisions based on the law, not on politically prompted bias or on who is paying their salary.*

Although it may be obvious, this Commission affirms that a healthy and independent judiciary is the very cornerstone of democracy. Judges must be paid salaries that adequately reflect their essential importance to the proper functioning of our constitutional machinery. It must be borne in mind, as well, that when making recommendations concerning judicial compensation, we are involved in no less a matter than the proper funding of a separate and independent branch of government. Judicial independence "requires objective conditions that ensure the judiciary's freedom to act without interference from any other entity. The principle finds explicit constitutional reference in ss. 96 to 100 of the *Constitution Act* 1867 and s. 11(d) of the *Canadian Charter of Rights and Freedoms*": see *Ell v. Alberta* [2003] 1 SCR 857 per Major J. at paragraph 18.

For the very reason that all judicial operations are funded by consent and approval of the legislature and, through it, the executive, the Supreme Court of Canada in the *PEI Reference Case* has declared that the matter of judges' pay and emoluments must be scrupulously depoliticized to maintain public confidence in judicial independence. The spectre must never arise of judges being manipulated by financial means for political ends. Thus it is said that the depoliticization of the relationship between the judiciary and the other branches of government is constitutionally mandated, and therefore part of the supreme law of this country.

The constitutional principles that apply are set out in the *PEI Reference Case* and include the following:

- salaries of Provincial Court Judges may be reduced, increased or frozen, subject to prior recourse to a special process which is independent, effective and objective, for determining judicial remuneration (page 637, paragraph 133);
- under no circumstances is it permissible for the judiciary to engage in negotiations over remuneration with the executive or representatives of the legislature (page 637, paragraph 134);
- any reduction to judicial remuneration, including de facto reduction through the erosion of salaries by inflation, cannot take those salaries below a basic minimum level of remuneration required for the office of a judge (page 638, paragraph 135);
- the principles that apply to salaries for judges apply equally to judicial pensions and other benefits (page 638, paragraph 136);
- judges, although they must ultimately be paid from the public purse, are not civil servants, since civil servants are part of the executive, and judges, by definition, are independent of the executive (page 640, paragraph 143);
- if a government rejects the recommendations of a Judicial Compensation Commission, the government must articulate a legitimate reason why it has chosen to depart from the recommendations of the Commission (page 654, paragraph 183);
- if judicial review is sought after a government rejects the recommendations of a Judicial Compensation Commission, a reviewing court must inquire into the reasonableness of the factual foundation of the claim made by the government (page 654, paragraph 183);
- there should be no negotiation of remuneration between the judiciary and the executive and legislature because negotiations from the public purse are "inherently political" (paragraph 146). However, it is proper for the Provincial Court Judges to convey their concerns and make submissions to government regarding the adequacy of current levels of remuneration (pages 655 and 656, paragraphs 186 - 189);
- financial security is a means to the end of judicial independence and is therefore for the benefit of the public (page 658, paragraph 193);
- judges' salaries must not fall below the basic minimum level of salary that is "adequate and commensurate with the status, dignity and reasonability of the office of judge" (page 659, paragraph 194).

The P.E.I. Reference Case also confirmed that there are three core characteristics of judicial independence: security of tenure, financial security, and administrative independence (page 631, paragraph 115). To a degree, all of these characteristics came into play in the submissions made to this Commission, but the matter of financial security was the central issue.

We have borne in mind at all times the following admonition from the *PEI Reference Case*:

> *In addition to being independent, the [judicial] salary commissions must be objective. They must make recommendations on judges' remuneration by reference to objective criteria, not political expediencies. The goal is to present "an objective and fair set of recommendations dictated by the public interest" (Canada, Department of Justice, Report and Recommendations of the 1995 Commission on Judges' Salaries and Benefits (September 1996), at p. 7). Although s. 11(d) does not require it, the commission's objectivity can be promoted by ensuring that it is fully informed before deliberating and making its recommendations. This can be best achieved by requiring that the commission receive and consider submissions from the judiciary, the executive, and the legislature. [page 650, paragraph 173]*

The Commission has been guided in its deliberations by the specific statutory requirements listed above, the submissions of the interested parties, the Canadian cases bearing on the subject of judicial compensation, and precedent commission reports from British Columbia and elsewhere in Canada.

The recommendations of this Commission are not binding on the government, as they are, for example, under the framework agreement between the Province of Ontario and the Ontario Conference of Judges. Section 6 (2) of the British Columbia *Judicial Compensation Act* provides as follows:

> *(2) The Legislative Assembly may, by a resolution passed within 28 days after the date on which a report is laid before the Legislative Assembly under subsection (1),*
>
> *(a) reject one or more of the recommendations made in the report as being unfair or unreasonable, and*
>
> *(b) set the remuneration, allowances or benefits that are to be substituted for the remuneration, allowances or benefits proposed by the rejected recommendations.*

This does not mean, however, that the Commission's recommendations are to be set aside lightly. The government is bound to act in good faith, and to justify its decision to reject any or all of the Commission's recommendations. *The PEI Reference Case* addressed this issue in the following terms:

> *...if after turning its mind to the report of the commission, the executive or the legislature, as applicable, chooses not to accept one or more of the recommendations in that report, it must be prepared to justify this decision, if necessary in a court of law. The reasons for this decision would be found either in the report of the executive responding to the contents of the commission's report, or in the recitals to the resolution of the legislature on the matter. An unjustified decision could potentially lead to a finding of unconstitutionality. The need for public justification, to my mind, emerges from one of the purposes of s. 11(d)'s guarantee of judicial independence – to ensure public confidence in the justice system. A decision by the executive or the legislature, to change or freeze judges' salaries, and then to disagree with a recommendation not to act on that decision made by a constitutionally mandated body whose existence is premised on the need to preserve the independence of the judiciary, will only be legitimate and not be viewed as being indifferent or hostile to judicial independence, if it is supported by reasons.*

The government's management of the treasury is an inherently political matter, and no one would suggest that judges are entirely insulated from general trends in public spending. The crucial thing to remember, however, is that judges are not civil servants, whose salaries and benefits can be unilaterally adjusted by their employer. This is the vital distinction: while judges are paid from public funds, they are not government employees. They occupy a highly unusual and important position in our society. They are, and must be seen to be, completely and totally independent of the political realm. As has been emphasized above, in fact, this Commission was established for the precise purpose of taking the politics out of relations between the judiciary and the executive.

4. Procedure and Methodology

The Commission's work began on receipt of the written submission by the Provincial Court Judges' Association of British Columbia (the "Association"). The Government of British Columbia responded with a written submission in April, 2004. The Commission solicited public input via advertisements placed in major newspapers, and a number of submissions were received in response.

The Commission also had the benefit of written briefs from:

- The Honourable Chief Judge Carol C. Baird Ellan;
- The Canadian Bar Association, British Columbia Branch;

- The Judicial Council of British Columbia; and
- The Law Society of British Columbia.

On May 25, 26 and 27, 2004, the members of the Commission travelled with officials from the Ministry of the Attorney General to the Surrey, Main Street (Vancouver), Robson Square (Vancouver) and Prince George Provincial Courts, and gained valuable insights by observing Provincial Courts in session and through a number of informal discussions with Provincial Court Judges.

The Commission held public hearings on June 8, 9 and 10, 2004, in Victoria, British Columbia, and had the benefit of oral presentations from the following persons:

- Mr. Ian McKinnon, Pacific Issues Partners
- The Honourable E.N. "Ted" Hughes, Q.C., O.C.
- Ms. Nathalie DesRosiers, President, Law Commission of Canada
- The Honourable Judge James J. Threlfall
- The Honourable Chief Judge Carol C. Baird Ellan
- Ms. Betsy Gibbons, Judicial Council of British Columbia
- Mr. David Paul, Past President, Canadian Bar Association, British Columbia Branch
- Mr. Michael Butler, Consultant
- Ms. Annette Wall, Vice-President, Public Sector Employers' Council of British Columbia
- Mr. M. Jerry McHale, Q.C., Assistant Deputy Minister, Justice Services Branch, Ministry of the Attorney General
- Mr. John Davison, Public Service Employers Council of British Columbia
- Mr. Jim Crone, Assistant Deputy Minister, Management Services Branch, Ministry of Attorney General

Since the public hearings, the Commission members have met on a number of occasions and received clarifications from the interested parties respecting several issues.

5. Issues Before the Commission

A. Disputed Matters

Compensation

The Association asked for salary increases to levels that would bring them more in line with judicial salaries recommended or implemented for judges of the Provincial Courts of Ontario, Quebec and Alberta. This, it was submitted, would not only lead to parity with analogous jurisdictions, but substantially narrow the large and growing gap in remuneration paid to judges of the Provincial and Supreme Courts of British Columbia.

The Association also submitted that the Chief Judge and the Associate Chief Judges of the Provincial Court should be paid 12 per cent and 6 per cent respectively in additional salary over and above the amount paid to puisne judges. It was proposed that, should the incumbent leave office and resume duties as a puisne judge, these elevated pay-scales should continue and remain unchanged until such time as they are exceeded by the puisne judges' salary.

On the first day of the Commission's public hearings, the Association made a specific submission with respect to the quantum of salary increase required. They sought an immediate pay rise to $200,000.00, with cost of living increases based on the consumer price index ("CPI") for successive years of the present Commission's mandate. The Association estimated that this recommendation would result in annual salaries in the $210,000.00 to $215,000.00 range by the 2007 – 2008 fiscal year.

The government, on the other hand, put forward the following salary proposals:

- 2004 – 2005 – no increase;
- 2005 – 2006 – no increase;
- 2006 – 2007 – increase to $166,000.00; and
- 2007 – 2008 – increase to $175,000.00.

The government did not accede to or oppose the submissions concerning salary differentials for the Chief Judge and Associate Chief Judges, but submitted that, should the incumbent leave office and resume duties as a puisne judge, his or her salary should revert to that of a puisne judge.

Benefits

a) Retired Judges

The Association sought a judicial benefit plan for retired judges that would provide continued extended health care, dental, and MSP coverage on substantially the same terms that apply to sitting judges, such plan to be funded and administered through the office of the Chief Judge.

The government's position was that the Commission should decline to make such a recommendation because the costs had not been established. They also encouraged the Commission to reject the Association's proposal that, in effect, the Commission should vet any proposed future change to the judges' pension benefits, on the basis that judges are part of the Public Service Pension Plan, which is administered by trustees for the benefit of all members, and the pension benefits in question are of general application to all members. The government stated that it has limited authority over changes to the benefits plan, and would not be able to shield Provincial Court Judges from changes thereto.

b) Sitting Judges

The Association sought a recommendation that, with the exception of MSP and Pharmacare, or other plans of general application to the public at large, no benefit, payment of any premium or fee, or term of a benefit plan for sitting judges should be changed without prior consideration by a Judges Compensation Commission. The Association argued that the principles of judicial independence relating to salaries applied equally to pensions and other benefits, and that the unilateral alteration of such benefits had the potential to affect judicial independence by altering the terms and conditions of judicial compensation outside the judges compensation process.

The government opposed this proposal, arguing that changes outside the judges compensation process need not necessarily affect judicial independence, as long as they are not the result of unilateral government action directed specifically at the judiciary. It was argued that across-the-board fiscal measures aimed at a broad class of individuals are not a threat to judicial independence, nor are the decisions of third parties that administer benefit plans.

Travel Allowance for Medical Treatment

The Association sought a recommendation that the medical plan relating to judges be extended to provide that judges on short-term illness be reimbursed for reasonable out-of-pocket expenses incurred for accommodation while seeking medical treatment in a location other than their homes. The Chief Judge, in her submission to the Commission, made reference to the fact that there are, at present, a number of judges of the Court suffering from illnesses requiring travel for treatment.

The government opposed this proposal. It argued, in essence, that this would constitute a benefit that was not available to any other group within the broad range of occupations funded by the public purse. In any event, there was insufficient evidence to establish with any degree of certainty what this recommendation would cost.

Professional Allowance

In her submission to the Commission, the Chief Judge sought an increase to the present judges' professional allowance of $2,000 annually. She did not suggest the amount of increase required, but specified that the allowance should continue to be administered according to guidelines established by the Chief Judge's office for payment of "incidental expenses incurred by a judge for the fit and proper execution of his or her office". At the public hearings, the Chief Judge submitted that these guidelines afforded her a degree of flexibility in approving expenses incurred by judges in the performance of their judicial functions, and noted that some of these expenses were not specifically related to judicial education.

The government opposed an increase to the professional allowance, and sought clarification from the Commission on the extent and scope of this allowance. The suggestion was made in the government's submission that, in the past, expenditures had been reimbursed through the allowance that could not be considered "professional development expenses". The government urged the Commission to make a recommendation that the allowance be restricted in use to the purchase of, or reimbursement of costs for, the following items or activities relevant to the duties of a Provincial Court Judge:

- books, periodicals and subscriptions;
- computer software and Internet access fees;
- membership fees for professional associations;
- courses, seminars and conferences, and the related travel and incidental expenses of attending.

Costs

The Association sought payment of all costs incurred in preparing for and participating in the proceedings of the Commission.

The government proposed to pay for half of those costs.

B. Joint Submissions

The Association and the government presented the following joint submissions to the Commission:

a) that the Senior Judges' part-time program be continued;

b) that the Public Service Pension Plan Rules be amended to allow judges to remain "active members" of the plan until age seventy;

c) that judges who have contributed the maximum to their pensions be able to contribute to registered retirement savings plans; and

d) that the policy directives of the government be amended to terminate, in respect of newly appointed judges, the six-month waiting period for employment benefits such as medical and disability benefits.

6. The Work of the Provincial Court

Introduction

Before considering the provisions of section 5(5) of the *Judicial Compensation Act*, we wish to set out in brief terms the nature of the work performed by our Provincial Court Judges.

The Provincial Court of British Columbia has one of the broadest and most comprehensive jurisdictions of any Provincial Court in Canada. The Court's work is primarily in criminal law but, unlike their colleagues in Ontario whose jurisdiction is restricted to criminal cases, the judges of our Court routinely hear family law, child protection and civil matters. The Provincial Court is likely to be the only judicial forum in which most members of the public will participate as litigants or witnesses.

Judges of the Provincial Court have been leaders in procedural reform, such as the Criminal Caseflow Management Rules and mandatory mediation in family, child protection and civil cases. Many judges, especially those who sit outside the South Coast of the Province, travel extensively to provide the full range of criminal, civil and family justice in a great many locations throughout the province. To ensure that judges stay abreast of evolving and complex legal matters, the Association has developed a continuing judicial education program, even though there is no dedicated budget for this within the Chief Judge's office.

Criminal Division

More than 97 per cent of criminal cases initiated in British Columbia are heard in Provincial Court. Over the Court's thirty year history, in fact, there has been a steady

devolution of jurisdiction over criminal matters from the Supreme to the Provincial Court, a process that continues to this day. For all practical purposes, the only criminal offences over which the Supreme Court now has exclusive jurisdiction are adult murder or conspiracy by an adult to commit murder. The Commission agrees that the remaining offences in Section 469 of the *Criminal Code* are almost unheard of in modern Canada or, at the very least, are crimes that are unlikely to yield a significant volume of prosecutions. The Provincial Court, in addition, deals with almost all cases initiated under the *Youth Criminal Justice Act*. The only exceptions are when a young person elects trial by a Supreme Court Judge or by a judge and jury for limited serious offences.

Civil Division

The Provincial Court's civil jurisdiction presently extends to claims up to $10,000.00. The Court has jurisdiction over all matters except claims involving defamation, malicious prosecution, or builders' liens. This aspect of the Court's jurisdiction differs from many Provincial Courts in Canada. In Ontario, Manitoba, New Brunswick, Nova Scotia, and Prince Edward Island, for example, Provincial Court Judges do not hear civil matters, and in other jurisdictions such as Saskatchewan and Newfoundland, the monetary jurisdiction of the Provincial Court is smaller than in British Columbia.

The Commission received an oral submission at the public hearings from Mr. Jerry McHale Q.C., Assistant Deputy Attorney General, Justice Services Branch. He advised us that the government has taken a decision to increase the monetary jurisdiction of the Provincial Court in civil matters to claims up to $50,000.00. He told us that the increase in jurisdiction may be introduced in phases, perhaps starting at $30,000 and building from there. This process would start, he thought, in the autumn of 2004. We were not provided with concrete statistics concerning the number of additional cases that this reform will generate. In the absence of any evidence to suggest otherwise, however, it would seem probable that judges of the Court will experience a heavier workload unless, for example, case management efficiencies are created to offset the additional burden. In any event, Mr. McHale was clear that there would be no net increase in funding to provide for more judges to carry the larger burden of work.

Family Division

In family matters, the Court deals with two major areas of law that are of vital interest to members of the public. The Court has primary jurisdiction over matters involving the protection of children, and shares jurisdiction with the Supreme Court in the areas of child custody, access and maintenance. The Court also has exclusive power to enforce all maintenance orders made under the *Family Relations Act* R.S.B.C. 1996 c.128. The only aspects of family law not within the jurisdiction of the Court are matters involving the division of matrimonial property, adoption, and granting of decrees of divorce. Once again, this breadth of jurisdiction in family

matters is not common to Provincial Courts across the country. We were advised that only in Alberta, Quebec, Yukon and North West Territories do Provincial Court Judges have analogous family law jurisdiction.

Family cases are often complex, sometimes intractable, and always of profound importance to the litigants involved. Meanwhile, government cutbacks to legal aid funding for family matters have led to a large and growing legion of unrepresented family litigants. The result, as set out in the Canadian Bar Association's written submission to us:

> *...is more time being needed to resolve family matters. Judges need to take more time and effort to explain the court process to self-represented litigants. Self represented litigants often find the court process complex, confusing and frustrating. The situation is also frustrating for the judges, lawyers and the clients who are paying for their lawyers to represent them in family court. To provide fair and impartial decisions in these cases of self-represented litigants, additional demands are imposed on the time, energy, professionalism and judicial expertise of the judges.*

This aspect of modern day judging was also emphasized by Ms. Nathalie DesRosiers, President of the Law Commission of Canada. She spoke to the Commission of the public's increasing willingness to turn to the legal system to resolve disputes, and the growing belief amongst litigants that this may be done without legal representation, regardless of ability to pay. She referred to "the decline of deference", meaning that unrepresented people can often be rude and contrary, and made the point that judges are having to deal more and more with litigants who are not only unrepresented, but mentally ill. These factors, she said, have made the judicial role more stressful and difficult.

7. The Current Financial Position of the Government

The Commission had the benefit of two highly informative reports on this topic from experts in the areas of government finance and administration. The first of these was authored by Mr. Ian McKinnon, whose services were engaged by the Association, and the second by Mr. Michael Butler, who was retained by the government. We were grateful, as well, to hear oral presentations at the public hearings from both of these distinguished witnesses.

According to Mr. McKinnon, the state of the Provinces finances is "sound". There have been deficits in the last three Provincial budgets, but debt to gross domestic product ("GDP") levels have remained constant since 1997, and British Columbia is in second place nationwide in terms of its net liability to GDP ratio. The Province is the second provincial favourite of international bond rating agencies, and an

upgrade in the government's credit rating is imminent. Recent budget forecasts anticipate three successive surpluses, and we were told that these forecasts are more transparent and detailed than ever before, and may be relied upon with great confidence. The government has met or exceeded its budgetary projections every year since taking office. In 2003, in fact, projected revenues were bested by performance by 1.2 billion dollars. Were it not for the government's tax cutting and restructuring policies, there would have been a surplus in all years from 2001 to 2004, except for 2002 – 2003. In other words, the deficits posted over the first three fiscal years of the present government's mandate were not attributable to exogenous causes alone, but had much to do with the policy decisions of government. Mr. McKinnon thereby drew a distinction between the strength of the economy generally, and constraints on the government's ability to pay caused by its own fiscal policies.

Mr. Butler agreed that British Columbia now appears to have entered a period of stronger economic growth, and that there would be surpluses over the next three fiscal years. He agreed with forecasts indicating that GDP growth next year will be in the 2 per cent range. However, he noted that over the long term, British Columbia's fiscal capacity had shown significantly smaller growth than other provinces, and was now about the same as that of Saskatchewan, whereas a decade ago it had been 27 per cent percentage points higher. He noted that British Columbia was now a "have not" Province, albeit marginally, in Canada's equalization payment scheme. He said that our public debt is now approximately 20 per cent of GDP, in the middle of a group of provinces with moderate debt loads that includes Saskatchewan, Manitoba and Ontario.

Mr. Butler told us that, since 1994, British Columbia has been the only major Canadian province to be downgraded by Moody's Bond Rating Agency, despite our low debt to GDP ratio. He also said that there was a growing disparity between British Columbia's fiscal situation and that of other large Provinces, resulting from economic changes, some of which may be permanent, that have caused the British Columbia economy to stagnate relative to most other provincial economies. The result is that British Columbia's real GDP per capita is 9 per cent less than the national average, and about the same as Saskatchewan's. He also noted that per capita disposable income in British Columbia from 1981 to the present has decreased from 12 per cent above the Canadian average to 5 per cent below average, about the same as in Manitoba. Much of this has had to do with the decline in the resource sector of the provincial economy, especially in forestry. GDP growth has been flat over the last 20 years, whereas Alberta's and Ontario's have spiked upwards. Mr. Butler predicted that the GDP disparity with Ontario and Alberta would exist for some time, as they were already well ahead of British Columbia in economic terms, and were showing no signs of slowing down.

Mr. Butler agreed, however, that British Columbia's financial position in general has improved since the present government took office. His report referred to the 2001 Government Fiscal Review Panel, which concluded that the previous government had been operating in a fundamentally unsustainable manner and that the province

was facing huge structural deficits. The new government was also concerned that British Columbia had become uncompetitive in its tax regime. As a matter of policy, therefore, the present government has pursued a two-pronged strategy calculated to create sustainable operations based on balanced budgets (and these are now required by law: see *Balanced Budget and Ministerial Accountability Act* SBC 2001 c. 28), and reduced taxes to increase our competitiveness with other jurisdictions.

This strategy has included personal income tax reductions of 25 per cent, corporate tax reductions of 18.2 per cent, and various other tax reforms designed to make British Columbia more attractive to business. We were advised that these reforms have been offset, in some significant measure, by a number of tax and fee increases, including an increase in the fuel tax and MSP premiums. However, generally speaking the government's plan has been to integrate tax reforms into the over-arching goal of balanced budgets on a sustainable, if not permanent, basis. The success of this plan will depend on other factors, such as expected revenue growth, a decline in the size of the public sector in British Columbia, and restraint in government spending. On this latter point, we were told that the government's budget projections are based on public sector wage increases of 0 per cent across-the-board in the 2004 – 2005 and 2005 – 2006 fiscal years.

Into this mix, Mr. Butler advised, the government has introduced a commitment to protect health care and education funding which, unlike other areas of government spending, has increased significantly over the course of the present government's mandate. This program of increased expenditures in health and education, together with the drive to reduce the cost of government generally and balance the budget, has created significant financial pressure on all other operations of government, in respect of which spending has been cut by approximately two billion dollars since 2001 – 2002. This includes a 52 million dollar reduction in the Attorney General's budget.

Mr. Butler advised that, over the next two fiscal years, the government intends to permit small spending increases in non-health and education operations, but the Ministry of Attorney General will be obliged to make spending cuts each year to 2006 – 2007. He suggested that government surpluses expected in the next three years are likely to be modest, within the range of "rounding errors" that would be entirely consumed, and a deficit incurred, if there were so much as a 1 per cent increase across-the-board in public sector wages. Mr. Butler did not see significant revenue growth on the horizon. Like Mr. McKinnon, he was satisfied that the present government's commitment to transparency in budgeting meant that the province's financial projections may be relied upon with confidence. He was quick to emphasize, however, that the British Columbia economy was very sensitive to changes in resource pricing, the value of the Canadian dollar, the sustainability of the US recovery, and various other factors that could materially affect the budget.

On the other hand, Mr. Butler agreed that the economic outlook of the Province was improving. He admitted the possibility that GDP growth could be as high as 3 per cent in 2004 – 2005, and noted that retail sales were up, and personal incomes

were growing at a rate 5 per cent above the national average. He confirmed that economic contingencies can operate positively as well as negatively. He mentioned specifically, for example, that if there were a resolution of Canada's long-standing dispute with the United States over softwood lumber, the economic outlook of the Province would improve to an even greater extent than presently forecast. He offered the opinion, generally speaking, that the economy was gaining strength, but at a modest rate that required restraint on the spending side.

Since the public hearings, the government of British Columbia has published its Public Accounts Report for the fiscal year ending March 31, 2004. The Association forwarded this Report to the Commission and the parties made written submissions about the information contained therein. We have considered the Public Accounts Report as evidence of the current financial position of the government. We have concluded that the Report confirms what we heard from Mr. McKinnon and Mr. Butler about the state of the government's finances.

The Commission has concluded from all of this that the financial position of the government is reasonably good and improving. However, the government must be careful with its spending and manage resources wisely. We agree that a measure of restraint would be in order in the short-term, but not to the extent that total a freeze on judicial salaries would be appropriate. Even over the first two years of the Commission's mandate, the government will comfortably be able to pay for increases to judicial salaries based on the CPI. In the latter two years of the mandate, we are confident that the government's disciplined budget policies will have solidified economic recovery, and larger salary increases will be affordable. Such increases will be necessary to bring our Provincial Court Judges' salaries in line with those recommended or implemented for judges of the same Court across Canada, and to reduce the wage gap between Provincial and Supreme Court judges.

8. The Need to Provide Reasonable Compensation to the Judges

We agree with the observations made on this subject in the 1998 British Columbia Judicial Compensation Commission report as follows at page 14:

> *"The salary and benefits provided to judges of every court should reflect the position of dignity and respect in which they are held by society. Judges make a unique and essential contribution to the stability and order that British Columbians value, and their remuneration should reflect that fact."*

This Commission has borne in mind that "reasonable compensation" includes the total compensation package received by judges, including salary, pension and other benefits. We have also considered the fact that judges, once they take office, are

restricted in their ability to earn income from any other source and that, according to Section 14 of the *Provincial Court Act* R.S.B.C. 1996 C.179, a judge "must devote himself or herself exclusively to judicial duties and must not engage, directly or indirectly, in any other occupation, profession, or business."

In making salary recommendations, the most useful comparators are the salaries paid to judges across Canada. In this connection, the Commission notes with concern the growing disparity between the salaries paid to Provincial and Supreme Court judges. Although this is a point that will be discussed again under the heading "*The Need to Maintain a Strong Court by Attracting Qualified Applicants*," this Commission accepts that it will be increasingly difficult to attract the best candidates to the Provincial Court if the government continues to pay its judges salaries that are significantly below those paid to federally appointed judges.

It may be that candidates for judicial office will prefer a Provincial rather than a Supreme Court appointment for reasons unrelated to pay. The two Courts are different in some ways, after all, and an aspirant to judicial office may be better suited temperamentally to one than the other. In the main, however, the Provincial and Supreme Courts are competing for the same pool of lawyers who possess the rare combination of personal and intellectual traits required for a successful career on the bench. The members of this Commission are concerned that many of the best candidates will opt for positions on the Court that presently offers in excess of $50,000.00 more per annum in remuneration.

On the basis of the broad and growing jurisdiction of the Provincial Court, which appears increasingly to parallel the jurisdiction of the Supreme Court, we can see no reason why Provincial Court salaries should lag so far behind. The substantial disparity between the salaries of Provincial and Supreme Court Judges contributes to a perception of second-class status for the Court that is most likely to be involved with a larger section of the public. We acknowledge, however, that Victoria does not have Ottawa's spending power, and the financial obligations of the provincial government should not be determined by the spending decisions of the federal or any other government. Our belief is simply that this large gap in salaries should be narrowed to the greatest extent possible.

The Commission notes, as well, that salary levels for judges of the British Columbia Provincial Court have begun to lag behind those paid to judges of the same Court in other provinces. Tables 1 and 2 below illustrate this fact. The Association has submitted that judges' compensation in British Columbia should be more in line with salaries paid to judges in the upper end of these tables. Generally speaking, we agree with this submission.

Until certain recent developments that will be discussed below, salary levels in the Supreme, Provincial and Territorial Courts for 2003 were as follows, in descending order of remuneration:

Table 1

1.	Federally appointed judges (Supreme Court of British Columbia)	$216,600
2.	Alberta	$186,000
3.	Northwest Territory	$182,972
4.	Ontario	$182,571
5.	Yukon	$178,000
6.	Prince Edward Island	$161,627
7.	**British Columbia**	**$161,250**
8.	Nova Scotia	$160,140
9.	Saskatchewan	$158,000
10.	Manitoba	$156,560
11.	Quebec	$155,069
12.	New Brunswick	$150,706
13.	Newfoundland	$145,600

In Alberta, Provincial Court salaries are the subject of a lawsuit currently before the Court of Queen's Bench. The Table 1 salary for Alberta was set by the provincial government after it rejected the recommendations of the 2003 Alberta Judicial Compensation Commission. The Commission had recommended the following:

April 1, 2003	$200,000
April 1, 2004	$210,000
April 1, 2005	$220,000

In Ontario, meanwhile, after the dismissal of an application by the Ontario government for judicial review of the 2003 report of the Ontario Provincial Judges Remuneration Commission (see *Ontario Conference of Judges v. Her Majesty the Queen in Right of Ontario*, June 21 2004, Docket No. 74/04, Ontario Superior Court of Justice), the Ontario Government issued an Order in Council on July 21 implementing the Ontario Commission's salary recommendations as follows:

April 1, 2001	$185,000
April 1, 2002	$198,000
April 1, 2003	$206,348

The next Ontario Judges Remuneration Commission will make recommendations for the period 2004 to 2007. In the interim, we understand that Ontario Judges' salaries for 2004 will be subject to an Industrial Aggregate Index adjustment of 1.3 per cent, calculated from April 1, 2004, which would produce a 2004 salary of $209,030.00.

In Quebec, the latest Judicial Compensation Commission, chaired by Vincent O'Donnell, QC, filed its report to the Quebec legislature on October 18, 2001, and recommended the following salary levels:

July 1, 2001 .....$180,000

July 1, 2002.....$182,000 plus CPI

July 1, 2003 .....a raise of $2,000 from the 2002 salary plus CPI

The Association, in its supplementary filings before us, suggested that applying this formula the 2003 salary for Quebec Judges would be approximately $187,700.

The O'Donnell Commission recommendations were rejected by the Quebec National Assembly on December 18, 2001, however, and the government substituted the salaries set out in Table 1. The *Conference des Juges du Quebec* sought judicial review of the government's response. On May 31, 2004, the Quebec Court of Appeal unanimously upheld the earlier judgement of the Quebec Superior Court declaring the government's rejection of the recommendations to have been unconstitutional. The Court of Appeal ordered the government to implement the O'Donnell salary recommendations by August 1, 2004.

In New Brunswick, the 2001 Judicial Remuneration Commission noted that Queen's Bench judges in that province were then earning $200,000 annually, while provincial judges were earning $141,000. The Commission recommended higher salaries for Provincial Judges to reduce this disparity in income. The salary levels recommended were as follows:

2001 .....$154,018

2002 .....$161,709

2003 .....$169,805

The government rejected the Commission's recommendations and substituted the salary levels set out in Table 1, above. The Provincial Court Judges' Association of New Brunswick applied to the New Brunswick Court of Queen's Bench for an order requiring the province to implement the Commission's recommendations. This application was dismissed, as was the Association's appeal to the New Brunswick Court of Appeal. The appeal of this decision is presently before the Supreme Court of Canada with a tentative hearing date of November 9, 2004.

If we take account of salary levels recommended by Commissions for 2003, the results are as follows, again in descending order of remuneration:

Table 2

1.	Federally appointed judges (Supreme Court of British Columbia)	$216,600*
2.	Ontario	$206,348
3.	Alberta	$200,000*
4.	Quebec	$187,700
5.	Northwest Territory	$182,972
6.	Yukon	$178,000*
7.	New Brunswick	$169,805*
8.	Prince Edward Island	$161,627
9.	**British Columbia**	**$161,250**
10.	Nova Scotia	$160,140
11.	Saskatchewan	$158,000
12.	Manitoba	$156,560
13.	Newfoundland	$145,600

(*denotes salaries that are being litigated, or subject to future Judges Compensation Commission recommendations).

The Commission has also considered the levels of remuneration paid to deputy ministers in British Columbia. These are instructive for two reasons. Firstly, they are illustrative of the value accorded to the work of senior members of government, and this has relevance to the need to provide reasonable compensation to judges. Secondly, deputy ministerial salaries are indicative of the government's ability and willingness to pay competitive salaries to key personnel. This, in turn, is a relevant factor to consider in assessing the current financial position of the government. Deputy ministerial compensation in British Columbia is set out in the following table:

Table 3

Deputy Minister Salary Ranges

Level	Minimum	Maximum
Deputy 1	$173,000	$203,500
Deputy 2	$154,000	$185,000
Deputy 3	$134,300	$167,000

We were advised that these salaries are subject to annual bonuses of up to 10 per cent.

We were also provided with information concerning executive compensation over the broader public sector in British Columbia, as well as in other jurisdictions. This information included salaries paid to the executives of Crown Corporations. There are probably limited similarities between the functions of a judge and, say, the Chairman of the British Columbia Lottery Corporation. On the other hand, when considering the need to provide reasonable compensation to the judges, it is instructive to consider the salaries paid to others on the provincial scene who are performing important jobs on behalf of the public. A survey of British Columbia public sector executive compensation is set out below:

Table 4

BC Public Sector - CEO Compensation as of April 30, 2004

Employer	April 30, 2004	Salary Range	Comments
BC Assessment Authority	$167,000 (no incentive bonus)	Not currently available	
BC Buildings Corporation	$240,000 + bonus eligibility of up to 25 per cent	Not currently available	
BC Housing Management Commission	$151,300 (no incentive bonus)	Not currently available	
BC Hydro	$295,000 + Variable incentive pay with target of 30 per cent of annual salary	No salary range	
BC Lottery Corporation	$230,000 + performance bonus of up to 25 per cent	Not currently available	
BC Rail	$350,000 + incentive maximum of 60 per cent of base salary	No salary range	
BC Transit	$158,209 (no incentive bonus)	$121,500 - $164,100	

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BC Rail	$350,000 + incentive maximum of 60 per cent of base salary	No salary range	
BC Transit	$158,209 (no incentive bonus)	$121,300 - $164,100	

Employer	April 30, 2004	Salary Range	Comments
BC Transmission Corporation	$275,000 + variable incentive pay with target of 30 per cent of annual salary	[redacted]	[redacted]
BC Utilities Commission	$145,000 (no incentive bonus)	[redacted]	[redacted]
ICBC	$300,000 + Short term incentive with $60,000 target ($100,000 maximum) and long-term incentive with $60,000 target ($100,000 maximum)	[redacted]	[redacted]
Innovation and Science Council of BC	$134,080 (no incentive bonus)	[redacted]	[redacted]
Legal Services Society	$145,246 (no incentive bonus)	[redacted]	[redacted]
Partnerships BC	$275,000 + proposed bonus structure that position be eligible for fiscal year end bonus based on a target of 50 per cent of annual salary and a maximum of 100 per cent of annual salary	[redacted]	[redacted]
Tourism British Columbia	$190,000 + incentive bonus of 1 per cent of corporate revenue	[redacted]	[redacted]
Workers' Compensation Board	$205,000 + incentive bonus of up to $20,000	[redacted]	[redacted]

From the foregoing information, it can be seen that there is a rather a wide range of salaries paid to judges across Canada, and to deputy ministers and senior public sector executives in British Columbia. The task of this Commission is, essentially, after considering the criteria set out in section 5 of the *Judicial Compensation Act*, to recommend where Provinicial Court Judges' compensation should be located within this range.

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Tourism British Columbia	$190,000 + incentive bonus of 1 per cent of corporate revenue	Not currently available	
Workers' Compensation Board	$205,000 + incentive bonus of up to $20,000	No salary range	

From the foregoing information, it can be seen that there is a rather a wide range of salaries paid to judges across Canada, and to deputy ministers and senior public sector executives in British Columbia. The task of this Commission is, essentially, after considering the criteria set out in section 5 of the *Judicial Compensation Act*, to recommend where Provinicial Court Judges' compensation should be located within this range.

9. The Need to Maintain a Strong Court by Attracting Qualified Applicants

This heading encompasses the need, not only to attract highly qualified candidates, but to motivate and retain judges after their appointment.

Whether the number of applications to the Provincial Court is marginally up or down over recent years, there is no evidence to suggest that the present levels of salaries and benefits offered to Provincial Court Judges are inadequate to attract or retain properly qualified candidates. The Commission received information from the Judicial Council of British Columbia that there are, at present, 38 candidates approved for appointment. On average, there are six vacancies on the Court per year, and few of these vacancies are created by judges leaving the bench to pursue other careers.

On the other hand, the Judicial Council stressed that only a very small number of lawyers apply to the Provincial Court; that applications from the private bar have been declining while those from the public bar have remained constant; and that very few QCs apply for the Provincial bench. The Council's submission to us also contained the following information:

> *Those private practitioners with significant criminal experience who apply tend to be legal aid practitioners, practitioners who may be struggling with their practices, or practitioners who are past the peak of their careers and perceive that the position will be less stressful than continuing to develop or maintain a healthy client base... Civil litigators who apply also tend not to be QCs and often have fewer years in practice than the Council would like to see. An increasing number of applicants have no experience in any of the subject matters in which the Court presides...*

This is cause for concern. Once again, however, according to the Judicial Council's own criteria for recruitment, there are still many more qualified candidates approved for appointment to the Provincial Court than there are positions available. This contradiction in evidence is difficult to reconcile, unless the point being made is that, at present salary levels, the Court is able to attract adequate, but not always excellent, candidates.

On this point, the Commission accepts that judges and candidates for judicial appointment are motivated by a variety of considerations besides annual salary. Other factors may be equally or more powerful, including the desire to serve the public. A judge's prestige, security of tenure, and generous pension are also very compelling attractions for members of the private and public bar alike. We also agree with the proposition that there is no necessary correlation between a lawyer's ability to earn a large income and his or her fitness for judicial office.

However, salary and benefits will always be an important consideration for those persons considering a judicial career. In order to attract the best candidates, pay and other benefits must not cause a chilling effect, or act as a disincentive. The salary and benefits package on offer must be sufficiently attractive to the broadest available constituency of highly qualified people, including successful private practitioners. Of equal importance is the need, addressed in large measure by the *Judicial Compensation Act*, to establish a system for reviewing these matters, such that incumbents and applicants alike will have confidence that they will be treated fairly over time. It is important to recall, in this connection, that judges are constitutionally forbidden from negotiating directly with government regarding the terms and conditions of their employment.

As mentioned earlier, another important factor to consider is that the Provincial and Supreme Court Benches are competing at all times to recruit the same pool of highly qualified candidates. With the current situation, in which Supreme Court Judges are paid salaries far in excess of those paid to Provincial Court Judges, it seems safe to assume that the Supreme Court has an undue advantage in this competition.

Subject to what is said below, the Commission is reluctant to rely unduly upon the information tendered by the Association respecting lawyers' incomes in private practice. The Morneau Sobeco report included in the Association's brief would appear to consist of data collected from income tax information in a manner that is less than comprehensive or scientific. There was not much reference to this report during the Commission's public hearings. On the other hand, information of this type was placed before the 2001 Ontario Provincial Judges Remuneration Commission, and in its final report, the Commission made the following observations about it at pages 23 and 24:

> *In the result, we do not view the data relating to the incomes of lawyers in private practice as significant if its use is restricted to trying to directly compare the remuneration of judges to the remuneration of practicing members of the bar.*
>
> *The data presented is of greater importance and assistance, however, when it is viewed on a macro level and placed in context of the determination of what we consider to be another factor relevant to our inquiry, namely, the need to attract outstanding and able candidates to the bench. The need to attract outstanding candidates of the highest quality has been a pervasive theme in many of the reports of various Triennial Commissions and is a factor which we also deem highly relevant. The salaries of practicing lawyers, whether they are in private practice, Crown Counsel, or in-house counsel, is significant primarily to ensure that our salary recommendations act to encourage, and not*

> *discourage, the ablest applicants from accepting appointments to the bench. A significant disparity between the incomes of members of the bench and members of the bar will serve as a disincentive to those private practitioners whose experience and ability make them suitable candidates for appointment to the bench.*

We respectfully agree that this is the manner in which to approach the available information about lawyers' incomes.

On a macro level, therefore, it may be safe to repeat the conclusion of the 2001 British Columbia Judicial Compensation Commission report that, "for some lawyers, appointment to the Provincial Court carries a financial disincentive; for most it does not" (page 23). On the other hand, it is important to remember that the object of our inquiry is not to identify a bare minimum acceptable level of judicial remuneration. We seek, instead, to recommend salaries that will attract the broadest range of qualified candidates, including successful private practitioners. We bear in mind that there are compelling attractions to a judicial career besides annual salary, and that there will always be a stratum of lawyers whose incomes are so high that judicial salaries will never be able to rival them. Our recommendations are calculated to serve as an incentive to outstanding candidates from private and public bars, and to reduce the competitive advantage of the Supreme Court in attracting such candidates. If our recommendations result in better qualified candidates to the Provincial Bench than those referred to in the Judicial Council's submission to us, we will have succeeded in our task.

10. The Laws of British Columbia

As we observed above, the government has made a commitment to balanced budgets. Under the heading *"Prohibition against deficit budgets"*, section 2 of the *Balanced Budget and Ministerial Accountability Act* SBC 2001 c. 28 provides that main estimates for 2004 – 2005 or for any subsequent fiscal year must not contain a forecast of a deficit for that fiscal year. It is a measure of how seriously this commitment is taken that cabinet ministers' salaries are based, in part, on delivering balanced or surplus budgets within their ministries: see sections 3, 4, and 5 of the *Act*.

Of equal importance is the *Judicial Compensation Act* SBC 2003, c. 59, referred to above. As we have said, this statute requires us to consider the financial position of the government. This position, it seems to us, may be determined in part by any lawful restrictions that may exist on the government's discretion to spend money. The question whether government is able to pay for an increase in judicial salaries must therefore be considered in the context of legally required balanced budgets. However, the *Judicial Compensation Act* also requires us to consider the need to provide reasonable compensation to judges, and the need to maintain a strong

court by attracting qualified candidates. These latter considerations go to the principle of judicial independence which, as we have noted, is grounded in the *Constitution Act 1867* and the *Canadian Charter of Rights and Freedoms*. It is therefore part of the supreme law of Canada, and any law (whether provincial or federal) that is inconsistent with judicial independence is, to the extent of the inconsistency, of no force or effect: see section 52 (1) of the *Constitution Act 1982*.

11. Other Matters the Commission Considers Relevant

The Association has submitted – and has not been contradicted – that the total cost of the recommendations they seek would be in the order of magnitude of a "rounding error", representing less than 0.04 per cent of the Consolidated Revenue Fund. As set out above, the government has made a long-term commitment to fiscal prudence without prejudice to increases in funding for our schools and hospitals. It is undeniably the realm of the government to make such decisions and set such priorities. We respectfully agree, however, with the following observations made in the 1998 British Columbia Judicial Compensation Committee report at page 13:

> *In tough times, when budgets are under strain, it's easy to forget that our health care and schools do not exist in a vacuum: they thrive in the environment of stability and accountability that is assured by the laws and the legal process that govern us all.*
>
> *A strong and independent judiciary is not a frill. It is the bedrock upon which we build the kind of successful and robust society that can support the health care and educational system that British Columbians so highly value.*

This Commission endorses the view that an independent judiciary is as important to the common good as decent schools and proper medical care.

12. Recommendations

Taking into account all of the foregoing factors, the Commission makes the following recommendations:

A. Disputed Matters

Compensation

The function of this Commission is to make salary recommendations that will attract the broadest possible constituency of highly qualified candidates, and reward our

dedicated incumbent judges for the valuable and important work they do, while keeping in mind the present financial position of the government. The goal must be to achieve salaries that are more in line with those paid to Provincial Court Judges in other provinces, to reduce the disparity between the salaries paid to Provincial and Supreme Court judges, and to situate our judges at an appropriate level of compensation compared to others on the provincial scene who are performing important jobs on behalf of the public. All of these matters duly considered and weighed, the Commission makes the following salary recommendations:

• January 1, 2004 – March 31, 2005	$161,250 + the change in the British Columbia CPI ("BC-CPI") over the period January 1, 2003, to December 31, 2003
• April 1, 2005 – March 31, 2006	March 31, 2005 salary + the change in the BC-CPI over the period January 1, 2004 to March 31, 2005
• April 1, 2006 – March 31, 2007	$198,000
• April 1, 2007 – March 31, 2008	$198,000 + the change in the BC-CPI over the period April 1, 2006 to March 31, 2007

The Commission recommends, furthermore, that effective January 1, 2004, the Chief Judge and the Associate Chief Judges of the Provincial Court be paid 12 per cent and 6 per cent respectively in additional salary over and above the amount paid to puisne judges, and that, should the incumbent leave office and resume duties as a puisne judge, these elevated pay-scales continue and remain unchanged until the amount is exceeded by the puisne judges' basic salary.

Benefits

a) Retired Judges

While we agree, in general, that benefits should not be changed between Commissions, we do not believe this general principle should apply to benefits included in the Public Service Pension Plan. This plan is governed by trustees who must act in the best interest of all shareholders and not in favour of a particular group therein. We were advised that the Association does not currently advocate the establishment of a pension plan especially for judges, from which we infer that the Association has concluded that the advantages of membership in the Public Service Pension Plan outweigh the detriments. We do not believe that such membership compromises judicial independence.

b) **Sitting Judges**

The Commission recommends that that, with the exception of MSP and Pharmacare, or other plans of general application to the public at large, no benefit, payment of any premium or fee, or term of a benefit plan, should be changed without prior consideration by a Judge's Compensation Commission.

Travel and Accommodation Costs for Treatment

The Commission declines to recommend that the medical plan relating to judges be extended to provide that judges on short-term illness be reimbursed for reasonable out of pocket expenses incurred for accommodation while seeking medical treatment in a location other than their homes. We agree that this would be an extraordinary benefit, but this does not mean that the matter should not be reconsidered before a future commission. The main impediment to making such a recommendation at present is that its cost cannot be forecast with any accuracy. This aspect of the proposal requires further study.

Professional Allowance

The Commission recommends that the judges' professional allowance be raised to $3,000.00 per judge per annum. This takes account of past inflation and anticipated future inflation to the end of 2007 – 2008. There should be a one-year carry over of any unused portion of the allowance.

We recommend, furthermore, that the allowance continue to be administered through the Chief Judge's office, and be subject to her sole discretion to approve "incidental expenses incurred by a judge for the fit and proper execution of his or her office". While we are pleased to clarify that the allowance is intended for matters related to professional development, and is not an auxiliary fund for general operating expenses, we are not prepared to set out an inflexible code of eligible uses for the allowance. The Commission has every confidence that the Chief Judge and her successors will exercise their discretion concerning the allowance judiciously and wisely.

Costs

The Commission recommends that that all of the Association's costs attendant upon their involvement in the processes of the Commission should be paid by the government.

This recommendation covers the Association's estimate of costs to the conclusion of the public hearings as follows:

Legal fees and disbursements	$49,047.94
Other Disbursements	
Ian McKinnon	$16,350.22
Morneau Sobeco	$6,783.80
Printing Costs	$2,823.69
Nathalie DesRosiers	$1,000.00
TOTAL	**$76,056.65**

We also recommend that the government pay the Association's reasonable costs and expenses incurred since the public hearings.

We wish to stress, however, that this recommendation reflects the fact that costs, on this occasion, were kept down by the diligence of the judges, who did most of the work on their own submissions. It may be that, if costs were to mount significantly in respect of future Commissions, this recommendation would not be repeated.

B. Joint Submissions

The Commission recommends that the following joint submissions be given effect:

a) Senior Judges Part Time Program

1. The office and benefits associated with the office of part time judge as described in the *Provincial Court Act* and *Judicial Compensation Act* continue; and

2. Section 9.1(2) and 9.1(11)(d) of the Provincial Court Act be repealed.

b) Age 69 to 70 Issue

Judges should be permitted to remain "active members" as defined in part 3 of the *Judicial Compensation Act* until the end of the month in which they attain the age of 70 years.

This would supersede the requirement of the pension corporation that judges end contributions and begin drawing pension at age 69, and be consistent with the *Provincial Court Act*, which sets the mandatory retirement age at 70.

c) RRSP Contributions

Pursuant to Section 18(4)(b) of the *Judicial Compensation Act*, sitting judges who have accrued their maximum pension cease making contributions to the Public Service Pension Plan. However, currently they continue to be issued pension adjustments by the pension corporation, which prevents them from making contributions to registered retirement savings plans.

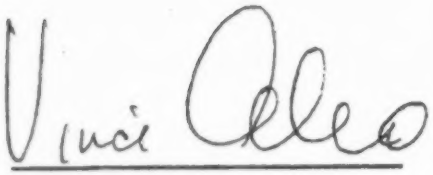
These judges should be permitted to contribute to a registered retirement savings plan as defined in the *Income Tax Act* (RSC 1985 Chapter 1, 5th supplement as amended). To that end, it is recommended that the Public Service Pension Plan Board of Trustees instruct the pension corporation to issue judges to whom this situation applies a pension adjustment statement showing the pension adjustment to be zero.

d) Six Month Waiting Period for Extended Health Benefits

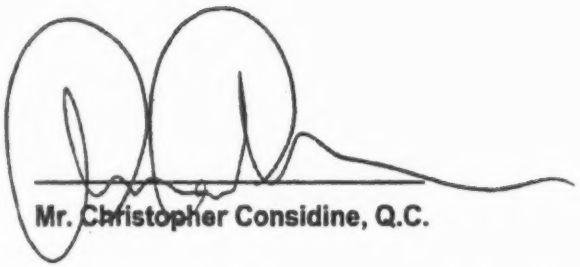
The policy directives of the government should be amended to terminate, in respect of newly appointed judges, the six-month waiting period for employment benefits such as medical and disability benefits.

All of which is repectfully submitted.

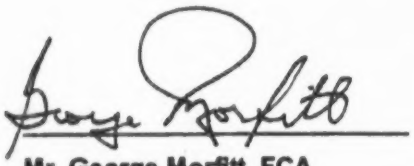
2004 Judges Compensation Commission



Mr. Vince Collins



Mr. Christopher Considine, Q.C.



Mr. George Morfitt, FCA

Chair